

(2019) 06 GAU CK 0038

In the Gauhati High Court

Case No : Writ Appeal No. 233 Of 2017, Interlocutory Application (Civil) No. 2868 Of 2017

State Of Assam And Anr

APPELLANT

Vs

Manoj Konwar And 28 Ors

RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 06 GAU CK 0038

Hon'ble Judges : Manojit Bhuyan, J; Manish Choudhury, J

Bench : Division Bench

Advocate : P Chakraborty, P Rabidasr, D Saikia, P J Saikia

Final Decision : Dismissed

Judgement

Manish Choudhury, J

1. The instant writ appeal by the appellants is directed against the judgment and order dated 16.12.2016 passed by the learned Single Judge in the writ petition, W.P.(C) No. 763/2013, and the order dated 09.06.2017 passed in the review application, Review Petition No.67/2017. By the judgment and order dated 16.12.2016, the learned Single Judge had directed the State respondents therein, the appellants herein, to release the regular pay scale to the 29 writ petitioners, who are impleaded as party-respondent Nos. 1 to 29 in the instant appeal, as Graduate Teachers of High Schools w.e.f. the dates of their respective joining. It was further directed that in the event of failure to pay the pay scale of the writ petitioners within a period of four months from the date of receipt of a certified copy of the order, the arrear amount would carry interest @ 6% per annum to be recovered from the erring officials. The review application preferred by the appellants, Review Petition No. 67/2017, seeking review of the aforementioned judgment and order dated 16.12.2016 was dismissed by the order dated 09.06.2017.

2. We have heard Mr. D. Mozumder, learned Additional Advocate General, Assam for the appellants as well as Mr. P.K. Goswami, learned senior counsel assisted by Mr. P.J. Saikia and Mr. R.S. Mishra, learned counsels appearing for the respondent Nos. 1 to 17 and 19 to 29. Also heard Mr. R. Dev, learned counsel for the respondent No. 18.

3. Before proceeding further, a brief narration of the relevant facts leading to the institution of the writ petition appear to be necessary. By an advertisement published in the English daily newspaper, "the Assam Tribune" in its issue dated 28.12.1996, applications were invited for filling up vacancies of 1000 posts of Graduate Teachers in the provincialised High Schools/Higher Secondary Schools and 200 posts of Subject Teacher in the Higher Secondary Schools in various districts of Assam. The advertisement specified the conditions of eligibility as well as the procedure of selection. The advertisement further mentioned that the scale of pay for the post of Graduate Teacher would be Rs. 1,375 - 3,375/- per month. The 29 respondents, all hailing from the district of Sivasagar, having found themselves eligible, applied for the post of Graduate Teachers in response to the said advertisement by depositing the application fee through treasury challans. The 29 respondents, thereafter, appeared in interview before the District Level Selection Board, Sivasagar (the Board, in short). By a W.T. Message dated 25.03.2001 issued by the Secretary to the Government of Assam, Education Department, all the Inspectors of Schools (except two hill districts) and the Director of Secondary Education Assam were, inter-alia, informed that the ban on appointment of teachers only had been lifted with immediate effect in respect of vacant posts of High Schools/High Madrasas and Higher Secondary Schools. It was further instructed that the selection should be made out of the candidates who had applied with treasury challans and no new applications would be called for. Appointments against the vacant posts of Graduate Teachers would be made from the selected candidates who had the requisite qualifications and who had applied earlier. It was made clear that appointment of selected teachers would be made on a fixed pay of Rs. 2,500/- per month for Graduate Teachers of High Schools and High Madrasas and Rs. 4,300/- per month for Subject Teachers of Higher Secondary Schools till completion of training, by maintaining the prescribed reservation. Specifying the prescribed percentage of marks for the two categories of teachers, direction was made to post the teachers against the existing vacant posts. It was further mentioned that district-wise number of vacancies to be filled, up would follow. The validity of the list of selected candidates who had applied with treasury challans earlier, was extended upto 31.03.2001. Thereafter, the 29 respondents and others came to be appointed as Assistant Teacher (Graduate) in different High Schools/Higher Secondary Schools in the district of Sivasagar at a fixed pay of Rs. 2,500/- per month on various dates from 27.03.2001 to 31.03.2001, in terms of the aforesaid W.T. Message dated 25.03.2001. When the 29 respondents and other similarly appointed Assistant Teachers were discharging their duties on fixed pay basis, the Inspector of Schools, Sivasagar District Circle issued a communication on 30.07.2001 to

the effect that the Government of Assam, Education Department had cleared only 24 number of Assistant Teachers and 193 appointments were found irregular. Accordingly, 24 Assistant Teachers were retained and appointments of remaining 193 teachers were terminated.

4. Faced with such termination, a writ petition, W.P.(C) No, 5449/2001, was instituted before this Court by 192 writ petitioners which included the present 29 respondents assailing the same. By virtue of interim order, the petitioners therein were allowed to continue in their services in the interregnum. Finding the impugned action of the State respondents to terminate the services of those teachers appointed in Sivasagar district in breach of natural justice, the learned Single Judge held the same to be unsustainable in the judgment and order dated 26.09.2003 passed in the writ petition, W.P.(C) No, 5449/2001. The State respondent authorities were directed to allow the petitioners therein to function in their posts and discharge their duties and also to release their salaries and all incidental service benefits forthwith, with the liberty to initiate appropriate action as per law. A show cause notice was issued on 05.01.2004 to which replies were duly submitted by the Teachers including the present respondents and the matter rested there. When Graduate Teachers appointed in some other districts, similarly appointed like the respondents herein, were granted regular pay scale by virtue of directions made by this Court in some other writ petitions, the respondents instituted the writ petition, W.P.(C) No. 763/2013, seeking regular pay scale.

5. The learned Single Judge had found that an enquiry was made regarding holding of sanctioned vacant posts by the 29 respondents herein and following the enquiry, it was reported that out of the 193 Graduate Teachers appointed in Sivasagar district, 87 including the present 29 respondents were found working against sanctioned posts. It was also found that the respondents were amongst 107 Graduate Teachers of Sivasagar district whose monthly fixed pay was enhanced from Rs. 2,500/- to Rs. 15,500/- per month by a Notification dated 19.06.2015. In the proceeding, the Director of Secondary Education in his affidavit had admitted that as per the latest report submitted by the Inspector of Schools, Sivasagar District Circle 09.11.2011, 202 teachers were working on fixed pay out of which 108 including the respondents, were working against valid sanctioned posts and 94 against non-sanctioned posts. The learned Single Judge had found denial of pay scale to the respondents who were serving as Assistant Teachers in Sivasagar district, unjustified in the face of judicial determination that they were appointed following a valid selection process and when similarly appointed teachers of other districts had already been granted regular pay scale. Having observed so, the writ petition, W.P. (C)No.763/2013, was allowed with the direction indicated above.

6. Mr. Mozumder, learned Additional Advocate General appearing for the appellants has submitted that the direction of the learned Single Judge to grant the respondents Nos. 1 to 29 i.e. the petitioners in W.P.(C) No.763/2013, the

regular pay of scale on the basis of the observation recorded regarding validity of the select list in the writ petition, W.P.(C)No. 5499/2001, was improper as the validity of the select list and the appointment of the respondents on fixed pay were two separate issues and the same was not sufficient to entitle them to receive regular scale of pay. He has further contended that mere inclusion in the select list did not give the respondents any indefeasible right for appointment as well as regular scale of pay. Even if the respondents were appointed at fixed pay on the basis of the select list held to be valid by this Court that per se would not entitle the respondents to receive regular scale of pay since they were appointed against posts not allotted in respect of Sivasagar district by the Government and the same had the effect of vitiating the impugned judgment. Further, the respondents having accepted fixed pay at the time of their initial appointment, cannot turn around and seek regular scale of pay. By making reference to the judgment and order passed in the writ petition, W.P.(C) No. 644/2004, on 16.11.2006 which was later in point of time to the judgment and order dated 26.09.2003 passed in the writ petition, W.P.(C) No. 5449/2001, submission is made that the learned Single Judge did not consider the findings recorded in the subsequent judgment and order dated 16.11.2006. The learned Single Judge had failed to appreciate that claim of regular scale of pay of the respondents seeking similar treatment, as had been granted to the similarly situated teachers of Sonitpur district, was based on negative equality which is not permissible under Article 14 of the Constitution of India. It is further submitted that the decision of the Supreme Court rendered in *State of Punjab and others vs. Jagjit Singh and others*, reported in (2017) 1 SCC 148 : 2017 (1) GLT (SC) 47, on which the learned Single Judge has placed reliance, is distinguishable.

7. Mr. Goswami, learned senior counsel appearing for the respondent Nos. 1 to 17 and 19 to 29, supporting the judgment and order of the learned Single Judge, has further submitted that the advertisement dated 28.12.1996 itself indicated the scale of pay to be granted to the persons to be selected against the posts advertised for Graduate Teachers in High Schools/Higher Secondary Schools. There was no dispute to the fact that the respondents were selected pursuant to a selection process undertaken by the State authorities and the appointments having been made from the candidates whose names appeared in the select list so prepared, it does not lie on the part of the appellants now to deny regular scale of pay to them as the respondents have been discharging the same duties like all other teachers in those High Schools/Higher Secondary Schools as well as the teachers in other districts, similarly appointed like the respondents, who have been granted regular scale of pay pursuant to the directions made by this Court in some other writ petitions, W.P.(C) No. 1805/2002, W.P.(C) No. 7905/2005 and W.P.(C) No. 3796/2002. The matter of grant of regular scale of pay is no longer res integra in view of the decision of the Division Bench of this Court in *State of Assam and others vs. Kalpa Ram Deka and others*, reported in 2009 (5)GLT 787. Referring further to the decision of the Apex Court in *People's Union for Democratic Rights and others vs. Union of India and others*, reported in (1992) 3

SCC 235, it is submitted that one should not be paid less than what he is entitled under law to receive and continuance of payment of fixed pay to the respondents, against their will under compelling situation, would amount to forced labour when they are entitled to regular scale of pay on the principle of "equal pay for equal work". He has further submitted that the ratio of State of Punjab and others vs. Jagjit Singh and other (supra) is also applicable in the instant case. Mr. Dev, learned counsel appearing for respondent No. 18, has adopted the submissions made by Mr. Goswami, learned senior counsel.

8. We have duly considered the submissions made by the learned counsels for the parties. We have also perused the materials available on record as well as the decisions cited by the parties.

9. By the advertisement dated 28.12.1996, applications were invited from intending candidates to fill up vacancies of about 1000 posts of Graduate Teachers in the provincialised High Schools/High Madrasas Schools and about 200 vacancies of Subject Teachers in the Higher Secondary Schools in the various districts of Assam. The application fees were specified for the two categories which were to be deposited by treasury challans. In so far as the post of Graduate Teacher was concerned, a graduate in Arts/Science or Commerce with at least 2nd Division in HSLC/HSSLC or equivalent examination was prescribed as essential educational qualification. It further indicated that preference should be given to B.Ed. or M.A. Degree holders and consideration would be given to previous experience of teaching as Assistant Teacher. It was mentioned that there would be only oral interview in the screening test for selection of candidate. The candidate would be selected on the basis of the performance of oral interview, educational qualifications and experiences, meaning thereby, the selection would be based on marks obtained in various examinations and experiences as Assistant Teacher and marks obtained in the oral interview. The advertisement also mentioned the pay scale for Graduate Teacher as Rs. 1,375 - 3,375/- per month.

10. The respondents-petitioners, all from Sivasagar district, admittedly had the qualification for the post of Graduate Teacher. Being so eligible, they submitted their candidatures along with the requisite treasury challans. It was the pleaded case of the petitioners that they appeared in the interview before the Board, Sivasagar. As could be discerned from Kalpa Ram Deka (supra), pursuant to the advertisement, so published, interviews were held and some select lists were prepared. With effect from 06.12.1999, the Government of Assam imposed a complete ban on appointment in various Government Departments including the Education Department. In the year 2001, the Government of Assam in the Education (Secondary) Department decided, with the approval of the Finance Department, to lift the ban only on appointment of teachers in respect of vacant posts in High Schools as well as Higher Secondary Schools with immediate effect. It was in that context, the W.T. Message dated 25.03.2001 was issued by the Secretary to the Government of Assam, Education Department the contents of

which have already been indicated in the preceding paragraph 3. By the said W.T. Message dated 25.03.2001, the Inspector of Schools of all the districts were directed to prepare a select list from amongst the candidates who had already applied pursuant to the advertisement aforementioned. The W.T. Message indicated that the validity of the list of candidates was extended upto 31.03.2001 and the proposed select list would expire on 30.06.2001. By the said W.T. Message, it was clarified that the appointments of Graduate Teachers would be made on a fixed pay of Rs. 2,500/- per month and the same would be made on the basis of district-wise selection list.

11. Appointments were made in different districts of Assam including the Sivasagar district, subsequent to the W.T. Message dated 25.03.2001. The present respondents came to be appointed as Assistant Teachers (Graduate) in different High Schools/Higher Secondary Schools in Sivasagar district by the Inspector of Schools, Sivasagar District Circle from 27.03.2001 to 31.03.2001 at a fixed pay of Rs. 2,500/- per month and they joined their respective posts on or before 31.03.2001. On being so appointed, they after joining, were discharging their duties till 30.07.2001 when by a communication of even date of the Inspector of Schools, Sivasagar District Circle, their services stood terminated all on a sudden. It was mentioned therein that against 24 number of allotted posts in Sivasagar district, 217 appointments were made. Against such termination, the writ petition, W.P.(C) No. 5449/2001, was preferred.

12. It was the case of the 192 writ petitioners in the writ petition, W.P.(C) No. 5449/2001, that pursuant to the advertisement dated 28.12.1996, a select list containing 283 names including the petitioners therein, was prepared by the Board which was duly approved by its Chairman on 26.03.2001. Subsequent to the W.T. Message dated 25.03.2001, the Inspector of Schools, Sivasagar District Circle appointed 217 candidates out of the said select list as Graduate Teachers in different High Schools/Higher Secondary Schools in the district between 27.03.2001 and 31.03.2001. The State, in response, pleaded initially that another W.T. Message dated 26.03.2001 followed the W.T. Message dated 25.03.2001 whereby only 24 posts of Graduate Teachers were allotted to Sivasagar district and the Inspector of Schools, Sivasagar District Circle appointed 193 Graduate Teachers in excess. Later on, the State respondents, by filing another affidavit, took another stand by contending that by W.T. Message 26.03.2001, only 5 vacant posts of Graduate Teachers were allotted. On perusal of the relevant records, according to the learned Single Judge, a different version emerged, contrary to the above two differing stands of the official respondents. In view of the above, the learned Single Judge reached at the inescapable conclusion that the official respondents had not been able to present before the Court a clear, consistent and acceptable stand in the matter.

13. The learned Single Judge had found that no prior opportunity of hearing was granted to the Teachers before termination of their services by the communication dated 30.07.2001. The learned Single Judge had found the

selection process valid and the select list unassailable and, therefore, the appointment of the petitioners therein which included the present respondents, was found to be preceded by a valid selection. It was further observed that the order of merit was not followed in retaining 24 candidates by the communication dated 30.07.2001 and there was indication of vacancies in excess of 24 in Sivasagar district. Taking cognizance of the entire conspectus of facts, the learned Single Judge in the judgment and order dated 26.09.2003 had held that the impugned decision to cancel the appointment in Sivasagar district was unsustainable for breach of the principles of natural justice without, however, deciding on the legality of the impugned action on the other aspects. By partly allowing the writ petition, W.P.(C) No. 5449/2001, the cancellation of appointment of the petitioners therein was set aside and consequently, they were allowed to continue in service with the further direction to sanction and release their salaries and all incidental service benefits. Liberty was also granted to the official respondents to consider and decide as to whether any fresh action should be taken in view of purported allotment of 24 posts. As a result of the judgment and order dated 26.09.2003, the respondents herein continued to function as Assistant Teachers thereafter, as the Government took a decision to allow them to continue in service and to release their salaries, etc. till their services were not terminated in due process of law.

14. The respondents were, thereafter, served with a show cause notice dated 05.01.2004 asking them to show cause as to why their services shall not be terminated on the statement of allegation that the Inspector of Schools, Sivasagar appointed 217 Assistant Teachers against only 24 posts of Assistant Teacher allotted by the Government. The said show cause notice was put to challenge in the writ petition, W.P.(C) No. 644/2004 and by order dated 30.01.2004, the show cause notice was kept in abeyance and in view of the said order suspending the show cause notice, the respondents continued to function as Assistant Teachers. The said writ petition, W.P.(C) No.644/2004, stood dismissed along with some other writ petitions on 16.11.2006 by providing that the petitioners therein who had not responded to the show cause notice, would respond to the show cause notice within 60 days and the Government would pass appropriate orders thereon. It is the pleaded case of the respondents that in compliance of the same, the replies to the show cause notice dated 05.01.2004 were submitted by them. By communication bearing No. B(3)S.807/2003/313 dated 09.03.2005 of the Commissioner & Secretary to the Government of Assam, Education Department, the Government accorded approval to the payment of salaries to 217 number of teachers, as per list enclosed by the Inspector of Schools, Sivasagar District Circle, who were appointed in High Schools/Higher Secondary Schools during March, 2001 at the monthly fixed pay of Rs. 2,500/- against sanctioned vacant posts w.e.f. the date of their joining and rendering services as such.

15. When the matter of the respondents was rested at that position, several writ petitions came to be filed, in the meantime, by similarly appointed teachers from

other districts claiming regular scale of pay as indicated in the advertisement dated 28.12.1996. Finding that the teachers came to be appointed pursuant to their selection in terms of the advertisement dated 28.12.1996 and there was prescription to provide a regular pay scale in the said advertisement, orders were passed in some of the writ petitions to provide regular scale of pay to the petitioners in those writ petitions of districts other than Sivasagar district. Claiming parity, the respondent Nos. 1 to 29 as the writ petitioners instituted the writ petition, W.P.(C) No.763/2013, seeking regular scale of pay w.e.f. the date of their joining in the respective schools, as had been granted to similarly situated Assistant Teachers of other districts.

16. The State by filing its affidavit, took a stand that the W.T. Message dated 25.03.2001 was followed by another W.T. Message dated 26.03.2001 wherein the number of posts to be filled up in provincialised High Schools/Higher Secondary Schools in each of the districts were indicated. In so far as the district of Sivasagar was concerned, it was stated that against the allotted 24 number of posts, the Inspectors of Schools appointed 271 number of teachers illegally, thereby, recruiting 247 number of teachers in excess. Out of those 247 number of excess teachers, 202 were found to be working at that point of time, receiving fixed pay of Rs. 2,500/- per month. Out of those 202 excess teachers, 108 were working against valid sanctioned posts and 94 against non-sanctioned posts.

17. In the judgment and order dated 26.09.2003 in the writ petition, W.P.(C) No.5449/2001, the learned Single Judge had held the selection process was valid and the select list was unassailable and, therefore, the appointment of the teachers in the district of Sivasagar was preceded by a valid selection. The said findings of the learned Single Judge was not assailed by the appellants and as a result, the said findings had attained finality. Thus, it is not a case that the respondents were appointed without undergoing any selection process. The respondents were appointed by the Inspectors of Schools, Sivasagar District Circle who is the appointing authority for Graduate Teachers under the Assam Secondary Education (Provincialised) Service Rules, 2003, (the Rules, in short). The respondents participated in the selection process undertaken pursuant to the advertisement dated 28.12.1996 where there was a clear prescription that selected Graduate Teachers would be appointed in the pay scale of Rs. 1375-3375/- per month. It is also not the case of the appellants that the respondents did not fulfill the essential educational qualifications prescribed in the advertisement and/or in the Rules. Admittedly, there was a ban imposed by the Government in respect of appointment in various Departments including the Education Department at one point of time and the appointments pursuant to the advertisement, were not made in subsequent years till 25.03.2001. It was only on 25.03.2001, the Government took a decision to lift the ban on appointment of teachers with immediate effect only in respect of vacant posts of High Schools/ High Madrasas and Higher Secondary Schools, which fact was reflected in the W.T. Message dated 25.03.2001. While so lifting the ban, the Government decided to appoint the selected teachers at a fixed pay and in that regard,

guidelines were also framed for such appointments. It is pertinent to note that when the advertisement was published on 28.12.1996, the intention was to select candidates against vacant sanctioned posts of Graduate Teachers and during the subsequent period, the situation had changed because of the ban and the decision was made to give fixed pay till completion of training.

18. The W.T. Message dated 25.03.2001 stipulated that appointments of Graduate Teachers were to be made against vacant sanctioned posts. The contention of the appellants herein was that by the subsequent W.T. Message dated 26.03.2001, only 24 posts of Graduate Teachers were allotted to Sivasagar district for appointment as there were only 24 number of vacancies of Graduate Teachers at that point of time. Per contra, the learned Single Judge on perusal of relevant records produced during the course of hearing of the writ petition, W.P. (C) No. 5449/2001, had found indication of availability of vacancies in excess of 24 in Sivasagar district. At one point, the claim of the official respondents was that the Inspector of Schools made appointments of 217 teachers against 24 allotted posts which had made the rest 193 appointments as irregular. A communication dated 02.06.2001 issued by the Inspector of Schools, Sivasagar District Circle in favour of the Deputy Commissioner, Sivasagar was also placed on record during the proceeding of W.P.(C) No. 5449/2001 wherein it was indicated that 261 posts of teachers of different categories were lying vacant, as on 31.03.2001, against which only 217 appointments were made during March, 2001. During the course of proceeding of the writ petition, W.P.(C) No. 763/2013, the Director of Secondary Education, Assam filed an affidavit wherein he stated that the numbers of posts of Assistant Teachers, allotted to each of the districts, was indicated by the W.T. Message dated 26.03.2001 to the Inspector of Schools. But the Inspector of Schools, Sivasagar without obtaining further clarification as conveyed in the W.T. Message dated 26.03.2001, appointed the candidates from the whole select list. He further stated that as against allotted 24 posts, the Inspector of Schools, Sivasagar in March, 2001 appointed 271 teachers (earlier the figure was 217), thus, making 247 teachers in excess. Referring to a report dated 09.11.2011 of the Inspector of Schools, Sivasagar, the Director of Secondary Education had stated that 202 number of teachers were found working and getting their salaries at the monthly fixed pay of Rs. 2,500/- and out of those 202 incumbents, 108 were working against valid sanctioned posts and 94 against non-sanctioned posts. By communication dated 27.11.2008, the Government in the Education Department asked the Director of Secondary Education information, inter alia, about the teachers appointed during the year 2001 in Sivasagar district and also about clear vacancy position of the existing post proposed to be adjusted in time scale of pay including details about original creation of the posts, etc. Similar information was sought for by communication dated 28.11.2008 by the Director of Secondary Education from the Inspector of Schools, Sivasagar. A report dated 19.10.2011 was submitted by the Inspector of Schools about 202 Assistant Teachers working on fixed pay of Rs. 2,500/-after being appointed during March, 2001 in Sivasagar district. It was reported that

out of 24 number of Assistant Teachers, appeared to be retained by the communication dated 30.07.2001, 21 were appointed against valid sanctioned posts and 3 were appointed against non-existent post during March, 2001. That apart, 193 number of Assistant Teachers were appointed during March, 2001 and out of those 193 Assistant Teachers, 87 number of teachers were working till then against vacant posts and remaining 93 were against non-existent posts. In the statement of particulars of 87 teachers found working against sanctioned posts, appended to the report dated 19.10.2011, the names of the present respondents appeared. The present respondents had been found working against sanctioned posts on being appointed after vacancies arose due to transfer, retirement etc. Noticeably, the said fact was not denied by the appellants. Thus, it has emerged that the respondents were appointed in March, 2001 in posts which were sanctioned and which were vacant.

19. In the writ petition, W.P.(C) No. 1805/2002, notice was taken to the fact that the petitioners' appointment therein were found to be made against existing vacancies but they were compelled to accept the fixed salary offered though selection was made as per the advertisement. The petitioners therein were found to be entitled to get the salary as indicated in the advertisement and as provided to the other similarly situated teachers appointed in reference to the same advertisement dated 28.12.1996. In the said fact situation, direction was made by order dated 28.06.2005 to make payment to the petitioners therein as per the pay scale indicated in the advertisement. Similar directions were made by orders dated 09.12.2005 and 21.02.2006 passed in the writ petitions, W.P.(C) No. 7905/2005 and W.P.(C) No. 3796/2002, respectively. By the communication dated 13.06.2011 of the Government of Assam in the Education (Secondary) Department, available on record, the petitioners in W.P.(C) No.3796/2002 were granted salaries including arrear salaries as per the pay scale.

20. One of the grounds taken in the instant appeal is that the learned Single Judge did not take note of the order dated 16.11.2006 passed in the writ petitions, W.P.(C) No. 644/2004 and 6 others. As noted above, these writ petitions were filed challenging the show cause notice dated 05.01.2004. As has been observed earlier, the learned Single Judge in the judgment and order dated 26.09.2003 passed in the writ petition, W.P.(C) 5449/2001, had observed that in case, however, the State authorities were inclined to take any adverse action against the appointees, they would afford a reasonable opportunity of a pre-decisional hearing to the appointees. In view of the liberty so granted, the show cause notice dated 05.01.2004 appeared to have been issued to the present respondents in contemplation to take the adverse action of termination of services, etc. In the bunch of writ petitions, W.P.(C) No. 644/2004 and 6 others, the Education Department did not file their counter-affidavit. Finding that liberty was granted to the State authorities in the writ petition, W.P.(C) 5449/2001, the learned Single Judge disposed of the bunch of writ petitions, W.P.(C) No. 644/2004 and 6 others, without expressing any opinion on merits, by providing that the noticees who did not respond to the show cause notice, shall respond to

the same by filing their respective replies within 30 days from 16.11.2006 and thereafter, the competent authority shall decide the matter in accordance with law within a period of 60 days from the date of furnishing show cause reply, by taking into account all relevant consideration and attending facts and circumstances involved in the case. The noticees including the respondents, thereafter, submitted their replies to the show cause notice. Thus, it can be seen that the appellants were not desisted from considering the matter in terms of the observations made in the order dated 16.11.2006. But inexplicably, there was inertia on the part of the appellants in this regard. In view of such inertia, the only deduction that can be made is that the appellants have allowed the respondents to continue to function in the post of Graduate Teachers till date. A consequential deduction can be made that the appellants have been extracting the services of the respondents by paying them only fixed pay instead of the prescription to pay regular pay scale as per the advertisement dated 28.12.1996. Such action is not permissible on the touchstone of Article 14 and Article 16 of the Constitution of India. As such, the contention of the appellants as regards the order dated 16.11.2006 passed in the bunch of writ petitions, W.P.(C) No. 644/2004 and 6 others, is misconceived and instead of fostering the case of the appellants, goes to aid the cause of the respondents.

21. Apart from the contention about suppression of the writ petition, W.P.(C) No. 644/2004, the other two grounds taken by the appellants in the present writ appeal, were also raised by the appellants in the review application, Review Petition No. 67/2007. The learned Single Judge dealt the two issues in the following manner ;

" 17. Reverting back to the grounds of review, in so far Justice (Retired) S.K. Kar Committee report is concerned, the Committee was constituted on 20.05.2006 to enquire into appointment of excess teachers under the Directorate of elementary Education and Secondary Education from 1996 to 2006. Report was submitted in the year 2009. Action taken on the said report was prepared on 11.12.2009. From the enquiry report as well as the action taken report, it is clear that there is no specific report regarding appointment of the opposite parties. The report does not mention about appointment of the opposite parties as illegal or excess appointees. Perhaps this could not have been done because of the judicial determination as above.

18. Regarding subsequent order of Single Bench dated 16.11.2006 passed in W.P. (C) No. 644/2004 filed by the opposite parties themselves, it is seen that opposite parties had mentioned about filing of this case in paragraphs 9 and 15 of the related writ petition in detail. Therefore, it cannot be said that there was suppression of material facts by the opposite parties. Even if we consider the order dated 16.11.2006, all that this order said is that the opposite parties were at liberty to submit reply to the show-cause notices where after appropriate orders could be passed by the departmental authority. It is the stand of the opposite parties that they had submitted their replies to the show-cause notices

but nothing has been done till date.

19. The last of the order on the basis of which review is sought for is dated 03.03.2017 passed by a Single Bench of this Court in W.P. (C) No. 211/2013 (Sikha Devi Vs. State of Assam). Firstly, this order was passed on 03.03.2017 whereas order sought to be reviewed was passed prior to that on 16.12.2016. Therefore, order dated 16.12.2016 cannot be reviewed on the basis of a subsequent order i.e., order dated 03.03.2017. That apart, from a perusal of the order dated 03.03.2017, it appears that neither of the parties thereto had brought to the notice of the Single Bench deciding Sikha Devi supra) about the order dated 16.12.2016. The specific finding recorded by the Single Bench in the judgment and order dated 26.09.2003 passed in W.P. (C) No. 5449/2001 was also not placed in detail before the Single Bench."

On due consideration of the above reasoning given by the learned Single Judge, we find no good and sufficient reasons to depart from the views given by the learned Single Judge in his order dated 09.06.2017.

22. The decision in Kalpa Ram Deka (supra) relates to the same advertisement dated 28.12.1996 and appointments made pursuant thereto by the Inspector of Schools, Kamrup. The respondents therein were found to be duly selected as their names appeared in the select list. When they were appointed as Assistant Teachers pursuant to directions made by this Court in writ petitions preferred by them, they were appointed at a fixed pay of Rs. 2,500/- per month. When another writ petition, W.P.(C) No. 6813/2015, was preferred by the respondents directions was made by order dated 06.02.2007 to grant the respondents the pay scale of Rs. 1,375 - 3,375/- in terms of the advertisement. When the appellants assailed the same in a writ appeal, a Division Bench of this Court found no justification to deny the respondents therein the pay scale which the advertisement had mentioned and accordingly, finding no merits in the writ appeal, the same was dismissed.

23. From the foregoing discussions, the facts that have emerged are (i) the respondents were qualified in terms of the advertisement dated 28.12.1996 for the post of Graduate Teacher and they had applied in response to the said advertisement; (ii) there was a valid selection process in Sivasagar district and the select list was unassailable, having attained finality; (iii) the appointment of the respondents was found to be preceded by a valid selection; (iv) there were vacant sanctioned posts in excess of 24 in Sivasagar district, contrary to the communication dated 30.07.2001; (v) the posts against which the respondents were appointed were vacant sanctioned posts; (vi) as on date, the respondents have been working against those sanctioned posts; (vii) the Graduate Teachers in other districts like Nagaon, Lakhimpur, Sonitpur, etc., similarly appointed like the respondents, pursuant to the advertisement dated 28.12.1996 have been granted the pay scale as per the said advertisement: (viii) there is no claim that there is difference in the duties and responsibilities discharged by the respondents in the High Schools/Higher Secondary Schools vis-à-vis all other

regularly appointed Graduate Teachers in those High Schools/Higher Secondary Schools as well as the teachers in other districts, similarly appointed like the respondents, who have been granted regular scale of pay pursuant to the direction made by this Court in some other writ petitions, W.P.(C) No. 1805/2002, W.P.(C) No. 7905/2005 and W.P.(C) No.3796/2002; and (ix) there was prescription in the advertisement dated 28.12.1996 that the candidates selected for the post of Graduate Teacher would be paid the then prevailing pay scale of Rs. 1,375 - 3,375/-per month.

24. The principle of "equal pay for equal work" is expounded in *State of Punjab and others vs. Jagjit Singh and other* (supra). It is held therein that the principle of "equal pay for equal work", applies to cases of unequal scales of pay, based on no classification or irrational classification. For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity. The above principle is squarely applicable to the case of the respondents herein.

25. In the light of the above discussions and the decisions referred above, we do not find any good and sufficient justification to interfere with the directions made by the learned Single Judge in the judgment and order dated 16.12.2016 passed in the writ petition, W.P.(C) No. 763/2013. We also do not find any infirmity in the order dated 09.06.2017 passed in the review application, Review Petition No. 67/2017. Resultantly, this appeal is found to be bereft of any merit and accordingly, the same stands dismissed. The interim order dated 25.08.2017 stands recalled. There shall be no order as to costs.